IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8280 of 1997

with

SPECIAL CIVIL APPLICATION No 8729 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SAURASHTRA MAZDOOR SANGH

Appearance:

1. Special Civil Application No. 8280 of 1997

MR. S.N.SHELAT, ADVOCATE GENERAL WITH
MR. DIPEN A. DESAI, ADVOCATE for Petitioner No. 1-2
MRS D.T. SHAH for the Respondent

2. Special Civil Application No. 8729 of 1997

MRS D.T. SHAH, ADVOCATE for the Petitioner

MR.S.N.SHELAT, ADVOCATE GENERAL WITH
MR. DIPEN A. DESAI, ADVOCATE for the
Respondentd No. 1 & 2

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 14/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. Both these petitions are directed against the award dated 28th April 1997 passed by the Industrial Tribunal in Reference No. (ITR) 297 of 1990.

1.1 The State of Gujarat and the Government Printing Press owned by it who are the petitioners of Special Civil Application No.8280 of 1997 have challenged the award, by which, allowing the reference, the Tribunal declaring that the Compositors in the Government Press are entitled to the pay-scale of Rs.350 - 560 instead of Rs.290 - 480 from 1-1-1973, directed the Government Press, Rajkot to carry out pay fixation of the Compositors accordingly and work out the amount of arrears payable to the Compositors together with dearness allowance payable thereon and to pay 50% of such amount to the them.

1.2 The Special Civil Application No. 8729 of 1997 filed by the Employees Union is directed against the award to the extent that it denies 50% of the amount of arrears payable as per the pay fixation directed by the Tribunal.

2. The dispute referred to the Industrial Tribunal, which was the subject matter of the said reference, was in the following terms :

"Whether the workmen working in Government Press as Compositors should be given pay-scale of Rs.350 - 560 instead of the pay-scale of Rs.290-480 from 1-1-1973 with arrears?"

According to the Union, in Gujarat University, Sardar Patel University, South Gujarat University and Ayurved University, as also in Maharaja Sayajirao University, the pay-scale for the post of Compositors was Rs.350 - 560, and since these institutions were getting

full grant from the government, no different treatment could have been meted out to the government employees working in the government press as compositors by giving them a lower pay-scale of Rs.290 - 480. According to the Union, the disparity pointed out by it, resulted in violation of their right to equality due to infringement of the principle of "equal pay for equal work". Referring to the historical background, the Union contended that, initially, the pay-scales of Proof Readers and Compositors were the same and it was only after the recommendations of the Desai Pay Commission that the Proof Readers were given a higher pay-scale of Rs.350-560, resulting in an anomaly against the Compositors. When the Third Pay Commission was constituted, the Union had filed a petition being Special civil Application No.4559 of 1987 in which a direction was given on 12-4-1990 as a result of which the government had referred this dispute to the Industrial Tribunal.

2.1 The Government Printing Press, Rajkot, in its defence exh.12, contended before the Tribunal that the demand was frivolous, and that the government press was not covered under the definition of "industry", nor was it a trade or business. It was contended that the provisions of the Industrial Disputes Act, 1947 were not applicable to such dispute, and that the Tribunal had no jurisdiction to try the reference. It was contended that, for any dispute between the government press belonging to State and its employees, the Tribunal constituted under the Gujarat Civil Services Tribunal Act, 1972 had jurisdiction to decide the dispute. It was then contended that the Desai Pay Commission had recommended the pay-scale of Rs.260-400 after hearing the Union's office bearers and the Head of Department and examining all the relevant aspects. The expert committee thereafter recommended the pay-scale of Rs.290-480 to Compositors, which was higher than the scale recommended recommended by the Commission. It was pointed out that, accordingly, the pay-scale of Rs.290 - 480 was prescribed for them under the Gujarat Civil Services (Pay Revision) Rules, 1975. It was also pointed out that, under these Rules, pay-scale of Rs.360 - 560 was approved for "Assistant Composed Foreman" and as per the rules of recruitment for the post of Assistant Composed Foreman, the Compositors, who had put in ten years' service and possessed proved merits, could be promoted to the post of Assistant Composed Foreman. Thus, the demand of the Union for the pay-scale of Rs.360 - 560 which was applicable to the higher post of Assistant Composed Foreman, was not justified. As regards the pay-scales of

Compositors in different universities, it was contended by the Government Press that the pay-scale of Rs.350 560 was given after re-designating the post of Compositors as Assistant Composed Foreman in the Universities. However, since in the Government Press, the Assistant Composed Foremen are given the pay-scale of Rs.350 - 560, the Compositors who are in the lower posts were not entitled to the same pay-scale. In the universities, since the posts of Compositors were upgraded to the post of Assistant composed Foreman, their responsibility had also increased.

3. The Tribunal took note of the fact that the recruitment rules for the posts of Compositors and Assistant Composed Foremen were different. However, in paragraph 9 of its award, it observed that the Union had never demanded the pay-scale of Assistant Composed Foreman, but its demand was that the Compositors and Proof Readers had enjoyed similar pay-scales and therefore, the Compositors should be given the pay-scale of Rs.350 - 560, which was given to the Proof Readers, with effect from 1-1-1973. In paragraph 11 of the award, the Tribunal held that, through oral evidence, the Union had made out a case that the Compositors and the Proof Readers were getting similar pay-scales upto the period when the Sarela Commission Report was in vogue and for the first time, different pay-scales were prescribed by the Desai Pay Commission w.e.f. 1-1-1973. The Desai Pay Commission had recommended that the Proof Readers should be given a pay-scale of Rs.350 - 560, while for the post of Compositors, it recommended the pay-scale of Rs.260 400, which was revised by the Expert Committee to Rs.290 - 480. Relying upon the statement produced at Annexure "B" by the Union, the Tribunal held that it showed the nature of work by the Compositors and the Proof Readers and held that the Union had also made out a case that the job evaluation for the post of Compositors was assessed at 325, while that of the Proof Readers at 310 by the Maharashtra Government. It was held that, Annexure "B" showed that the duties of the Compositors were greater than those of the Proof Readers. The Tribunal considered that as the pivotal reason for granting the pay-scale of Rs.350 - 560 to the Compositors working in the Government Press on parity with the post of Proof Readers. It was held that the Report of the Desai Pay Commission, in so far as it related to recommendation for the post of Proof Readers and Compositors was concerned (exh.30), showed that there was lack of representation on the part of the Compositors. It was held that the Compositors did not appear to have made any representation before the Pay Commission. After referring to certain excerpts from the

report of the Desai Pay Commission, the Tribunal went on to observe that the Desai Pay Commission was not apprised of the fact that the Proof Readers and the Compositors were earlier getting similar pay-scales. It was also not brought to the notice of the Pay Commission that the duties of the Compositors were greater than those of the Proof Readers. It was held that, had this fact been placed before the Pay Commission, perhaps this dispute may not have arisen. The Tribunal undertook the task of examining the parity between the posts of Proof Readers and Compositors prior to 1969 and after 1969 and held that, injustice was done to the Compositors. It also examined the pay-scales of different universities, prepared tables and found that the Compositors had been put at par with the Proof Readers in the Universities in the matter of pay-scales by changing their designation as Assistant Composed Foreman. It was observed that, ".... This Tribunal feels that there should not be dissimilarity in the pay-scale scales of Proof Readers and the Compositors even in the Government Press and it should be equalized as done in the case of Universities' ....". The Tribunal accordingly directed that the pay-scale of Rs.350 - 560 be given to the compositors in the Government Press instead of Rs.290 480 from 1-1-1973 and 50% of the arrears be paid to them, together with admissible dearness allowance, from 1-1-1973.

4. The learned Advocate General appearing for the petitioners (in Special Civil Application No.8280 of 1997) contended that the Tribunal had no jurisdiction to amend or modify the pay-scales awarded to the government employees under the Rules framed under Article 309 of the Constitution of India. It was submitted that the statutory rules were as much binding on the Tribunal as they were on the Civil Court and so long as the rules remained valid and operative, no conflicting award or decision could be given by the Tribunal. It was submitted that, in the hierarchy of posts in the government press, the posts of Compositors and Proof Readers were different and were governed by separate statutory rules of recruitment. It was argued that, having regard to the vertical and horizontal relativities, the Desai Pay Commission had made its recommendations and the Expert Committee considering the relevant aspects applicable to the post of Compositors, in fact, awarded a higher pay-scale to them than the one which was recommended by the Desai Pay Commission. The Compositors cannot claim pay-scale of the higher post which was governed by separate rules, because, giving them the pay-scale of Rs.350 - 560 as done by the Tribunal under the impugned award would disturb the

vertical relativity of the post of Assistant Composed Foreman and Compositors. He referred to the relevant recruitment rules to point out the difference between various posts in the government press. It was also contended that running of government press by the State was not an "industry".

4.1 In support of his contentions, the learned Advocate General placed reliance on the following decisions :

[a] The decision of the Supreme court in State of Haryana v. Haryana Civil Secretariat Personal Staff Association, reported in AIR 2002 SC 2589, was cited for the proposition that fixation of pay and determination of parity in duties and responsibilities is a complex task which was for the executive to discharge. While taking a decision in the matter several relevant factors, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. Priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of complex nature of issues involved, the far-reaching consequences of a decision in the matter and its impact on the administration of the State Government, Courts have taken the view that ordinarily Courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. (paragraph 10 of the judgement).

[b] The decision of the Supreme Court in State of U.P. v. J.P.Chaurasia, reported in AIR 1989 SC 19, was cited for the proposition that the answer to the question whether two posts are equal or should carry equal pay depends upon several factors, and did not just depend upon either the nature of work or volume of work done. The equation of posts or equation of pay must be left to the Executive Government and must be determined by expert bodies like Pay Commission, who would be the best judge to evaluate the nature of duties and responsibilities of posts. It was held that, if there is any such determination by a Commission or Committee, the court should normally accept it, and not try to tinker with such equivalence unless it is shown

that it was made with extraneous considerations.

[c] The decision of the Supreme Court in Mullikarjuna Rao v. State of A.P., reported in AIR 1990 SC 1251, was cited for the proposition that, it was neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which was exclusively within the domain of the executive under the Constitution. It was held that power under Article 309 of the Constitution to frame rules is the legislative power, and the High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution. It was also held that the Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule-making power in any manner.

[d] The decision of the Supreme Court in Dinesh Chandra Sangma v. State of Assam, reported in AIR 1978 SC 17, was cited for the proposition that it was well settled that, except in the case of a person who has been appointed under a written contract, employment under the Government is a matter of status and not of contract, even though it may be said to have started, initially, by a contract in the sense that the offer of appointment was accepted by the employee.

[e] The decision of the Supreme Court in R.L.Bansal v. Union of India, reported in AIR 1993 SC 978, was cited for the proposition that the rules made under the proviso to Article 309 of the Constitution being legislative in character cannot be struck down merely because the Court thinks that they are unreasonable. They can be struck down only on the grounds upon which a legislative measure can be struck down.

[f] The decision of the Supreme Court in State of Haryana v. Haryana Civil Secretariat Personal Staff Association, reported in (2002)6 SCC 72, was cited for the proposition that a "claim for equal pay for equal work" is not a fundamental right vested in an employee, and that, fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. It was held that the

Court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same.

[g] The decision of the Supreme Court in Secretary, Finance Department v. West Bengal Registration Service Association, reported in AIR 1992 SC 1203, was cited for the proposition that it was well settled that equation of posts and determination of pay-scales is the primary function of the executive and not the judiciary and therefore, ordinarily Courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay commissions.

[h] The decision of the Supreme Court in State of W.B. v. Hari Narayan Bhowal, reported in (1994)4 SCC 78, was cited for the proposition that the principle of "equal pay for equal work" can be enforced only after the persons claiming satisfy the court that not only the nature of work is identical but in all other respects they belong to the same class and there is no apparent reason to treat equals as unequals.

[i] The Full Bench decision of the Kerala High Court in Director of Postal Services (South) Kerala Circle v. K.R.B.Kaimal, reported in 1984 LAB. I.C. 628, was cited for the proposition that the rights and liabilities of the temporary government servants in the P & T Department are to be found in the Rules framed under Article 309 of the Constitution, and that the duration of the temporary service, the mode of termination, the conditions under which they can claim any monetary benefit on termination of their services, were all contained in those Rules. It was held that the Courts cannot ignore the rules nor efface them from the statute book simply because there was the Industrial Disputes Act. The Court relied upon the decision of the Supreme Court in Bangalore Water Supply & Sewerage Board v. A. Rajappa, reported in (1978)2 SCC 213, in which it was held that, the rules under Article 309 of the Constitution may expressly or by necessary implication, exclude the operation of the Industrial Disputes Act, and that if express rules under other enactments govern the relationship between the State as and employer and its servant as employees, it may be

contended, on the strength of such provisions, that a particular set of employees are outside the scope of the Industrial Disputes Act, for that reason. The special Act excludes the applicability of the general.

[j] The decision of Madras High Court in General Secretary, Madras Harbour Workers' Union v. The Industrial Tribunal, Madras, reported in 1972(1) LLJ 8, was cited for the proposition that if the scheme which had all the characteristics of a subordinate legislation, was to be amended by the Tribunal, the Tribunal would be arrogating to itself too much power, which it did not have, because, under Section 4(1) of the Madras Dock Workers (Regulation of Employment) Act, 1948, the Central Government alone had the jurisdiction to amend and modify the provisions of the scheme and not the Industrial Tribunal.

5. The learned counsel appearing for the respondent Union belatedly raised a preliminary objection that this Bench should not hear the matter, because, it should go before the learned Single Judge under the Rules. It was submitted that the Union had not challenged any Entry of the Revision of Pay Rules, 1975, and that since the jurisdiction of the Tribunal was not challenged, no new plea can be raised even on the question of jurisdiction before this Court. It was submitted that, despite the recruitment rules being separate, the Compositors were entitled to the same pay-scale as was given to the Proof readers, because, their duties were of similar nature and, in the past, in the Saurashtra Government and even thereafter, prior to the year 1969, parity in pay-scale was maintained between these two posts. It was only after the Desai Pay Commission recommendations that the parity was disturbed. The learned counsel argued that the reference was made to the Tribunal after the High Court had disposed of the earlier petition with a direction that the Government may consider the question of referring the dispute to the Tribunal and therefore, the jurisdiction cannot now be questioned in the present proceedings. It was submitted that whenever a dispute between workman and the employer exists, the industrial dispute would arise, in respect of which, the Tribunal would have jurisdiction under Section 7A of the Act. It was submitted that the Tribunal had all the powers to interfere with the existing service conditions of all workmen, including government employees who were workmen, by modifying, varying or adding to their service conditions. It was argued that the Tribunal can change

the terms of the contract of service and pass an award granting just and appropriate relief to such workmen. It was also contended that the government press run by the State was an "industry".

5.1 In support of her contentions, the learned counsel for the Employees Union relied upon the following decisions :

[a] The decision of the Supreme Court in Co-operative Central Bank Ltd. v. Additional Industrial Tribunal, reported in AIR 1970 SC 245, was cited to point out that, it was held by the Supreme Court in paragraph 10 of the judgement that the jurisdiction which was granted to the Industrial Tribunal by the Industrial Disputes Act was not the jurisdiction of merely administering the existing laws and enforcing existing contracts. Industrial Tribunals have the right even to vary contracts of service between the employer and the employees which jurisdiction can never be exercised by a civil court or a Registrar acting under the Co-operative Societies Act.

[b] The decision of the Supreme Court in Patel Ishwarbhai Prahladbhai v. The Taluka Development Officer, reported in AIR 1983 SC 336, was cited to point out that the supreme Court held that the tube well operators who were employed in scheduled employment under the local authorities were entitled to minimum wages and other benefits under the Act, it not being disputed that minimum wages were fixed by the State Government in respect of tube well operators generally though the benefit was not extended to, the tube well operators concerned in the appeals.

[c] The decision of the Supreme Court in State of Haryana v. Ram Chander, reported in (1997)5 SCC 253, was cited to point out that the Supreme court upheld the claim for parity in pay-scale of teachers in different educational institutes. The Supreme Court observed that the difference in the nomenclature between the two sets of employees, namely language teachers like the respondent in technical institutes and lecturers in higher secondary schools, did not represent any substantial cleavage in the quantity and quality of work done by these sets of employees.

[d] The decision of the Supreme Court in The

Corporation of the City of Nagpur v. N.H.Majumdar, reported in AIR 1960 SC 675, was cited for the proposition that the definition of "industry" under Section 2(j) of the Industrial Disputes Act was very comprehensive and if any activity falls under either part of the definition, it would be an industry within the meaning of the Act. The Supreme Court held that if a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purposes of the Act.

[e] Reliance was placed on the decision of this Court in Gujarat Mineral Development Corporation v. Presiding Officer, Labour Court, reported in XXVII(1) GLR 410, in which, it was held that the pleas which were not taken in the trial court cannot be permitted to be taken for the first time in the writ petition.

[f] Reliance was placed on the decision of this Hon'ble Court in Adamji M. Badri v. Labour Officer, reported in (1981)1 LLJ 367, for the proposition that the definition of "industrial dispute" under Section 2(k) of the Industrial Disputes Act, is wide enough to embrace within its sweep any dispute or difference between an employer and his workmen connected with the terms of their employment.

[g] The decision of this Court in Kalol Municipality v. Shantaben Kalidas, reported in XXXIV(2) GLR 997, was cited for the proposition that the Gujarat Municipalities Act, 1963 did not deal with the sphere of industrial dispute which was occupied by the Industrial Disputes Act. After the workman raised industrial dispute for changing their existing conditions of employment, the matter would be entirely governed by the Industrial Disputes Act, which provides for settlement of industrial disputes by changing, modifying or altering the existing conditions of service whether under a contract or under a Rule. Once the dispute is raised, the matter would be governed by the Industrial Law.

[h] The decision of this Court in D.J.Joshi v. Principal Chief Conservator of Forests, reported in 1998(3) GCD 2576 (Guj), was cited to point out

that the government was directed to consider afresh the question of pay-scale of R.F.O. (Survey) after giving an opportunity to the petitioners. Such a direction appears to have been given on concession recorded in paragraph 17 to the effect that the government may be directed to re-consider the matter.

6. The learned counsel for the respondent Union in her preliminary objection, submitted that the learned Single Judge had jurisdiction to entertain the matter of this nature. She referred to the provisions of Rule 2 of the Gujarat High Court Rules, 1993, which enumerates the matters which may be disposed of by a Single Judge of the High Court and pointed out that, under item (10) of Rule 2, applications under Article 226 of the Constitution of India could be disposed of by the learned Single Judge. It will, however, be seen from Rule 2(10)(3) that the applications under Article 226 of the Constitution except those where the awards under the Industrial Disputes Act concerning the revision of wages or wage structure of a class or classes of employees in an industry are challenged, could be disposed of by a Single Judge. A Single Judge had no jurisdiction to hear applications under Article 226 of the Constitution where awards under the Industrial Disputes Act concerning revision of wages or wage structure of a class or classes of employees in an industry are challenged. Realising this difficulty, the learned counsel switched over to an extreme argument that, in the present case, the Tribunal's award was not on wages. Referring to the definition of the word "wages" in section 2(rr), she submitted that, in the present case, the demand was for a higher pay-scale only and not of allowances or other remuneration. It was contended that there was no issue of wage fixation before the Tribunal, but the issue was of entitlement of particular pay-scale and therefore, it becomes subject matter for a Single Judge to decide. The contention is obviously erroneous, because, the word "wages" as defined means all remuneration capable of being expressed in terms of money payable to a workman in respect of his employment or work done. In the statement of claim raised by the Union, a copy of which is at Annexure "G" to the petition, the Union had claimed a higher scale of pay of Rs.350 - 560 as against Rs.290 480 for the Compositors working in the government press and had also sought for arrears, including accrued pay from 1-1-1973. The claim was based on principle of "equal work equal wage" as mentioned in paragraph 2 of the statement. The reference made to the Tribunal was clearly concerning wages and therefore, the award made is an award

concerning wages. By the impugned award, the Tribunal declared that the Compositors were entitled to a higher pay-scale of Rs.350 - 560 and directed the government to carry out the pay fixation accordingly. In the third schedule, read with Section 7A of the Industrial Disputes Act, 1947, the first item falling within the jurisdiction of the Tribunal is described as wages, including the parity and mode of payment. A Single Judge would, therefore, have no jurisdiction to hear the application under Article 226 of the Constitution under the said Rule 2(10)3 of the High Court Rules, in the present case, where the award was concerning revision of wages of a class of employees, namely those working in the government press as Compositors, who have been awarded a higher pay-scale against the one which was given to them under the Revision of Pay Rules 1975, applicable to them. There is, therefore, no substance in the preliminary contention raised by the learned counsel.

6.1 The learned counsel submitted that she had raised this point only with a view to see that the respondent Union may not lose a right of Letters Patent Appeal. Even that submission is erroneous, because, the petition against the award of the Tribunal would ordinarily be entertainable under Article 227 of the Constitution and if Single Judge had entertained it under Article 227 of the Constitution, then there would have been no question of losing right of Letters Patent Appeal.

7. The Industrial Disputes Act, 1947 was enacted to make provision for the investigation and settlement of industrial disputes. "Industrial dispute" as defined by section 2(k) of the Act means, any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. Labour Courts and Industrial Courts are to be constituted for the adjudication of industrial disputes by the appropriate government by notification in the official gazette, as provided in sections 7 and 7A, respectively. Industrial Tribunals are constituted for the adjudication of disputes relating to any matter whether specified in the second schedule or the third schedule and for performing such other functions, as may be assigned to them under the Act. The phrase "such other functions as may be assigned to them under this Act", occurring in Section 7A can be illustrated by reference to Section 10A under which the dispute may be referred to arbitration of persons including a Tribunal or National Tribunal before the dispute is referred under

Section 10 for adjudication.

7.1 The jurisdiction of the Tribunal will be confined to the matters enumerated under schedule 2 or 3 or for performing other functions as may be assigned to it under the Act and cannot extend to any matters for which separate statutory provisions are made and different forums are prescribed under them for their adjudication. The inquiry into the existence of jurisdiction of a Tribunal cannot end merely by referring to the definition of "workman " under Section 2(s) or "employer" under Section 2(g), but must extend to examining whether the nature of the dispute is a matter falling under schedule 2 or 3, and if so, whether or not the field is covered by any statutory provision enacted to provide a different course and machinery for the adjudication of the dispute. Where statutory provisions exist dealing with the adjudication of disputes which cannot co-exist with the exercise of jurisdiction by the Industrial Tribunal over such matters, then such special statutory provisions alone will prevail and the disputes will have to be resolved as per the provisions enacted for the purpose. If this be not so, then the Tribunal can even override the constitutional power of the appropriate Legislature or the President or the Governor conferred by Article 309 of the Constitution, which reads as under :

"309. Recruitment and conditions of service of persons serving the Union or a State.-Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act."

7.2 The power under Article 309 deals with the field of recruitment and conditions of service of persons serving under the Union or a State enabling the appropriate Legislature to "regulate the recruitment and conditions of persons appointed, to public services and posts in connection with the affairs of the Union or of any State". This power can be exercised, in absence of any enactment by the appropriate Legislature, by President or the Governor, as the case may be. Thus, the rules made by the President or the Governor which regulate recruitment and conditions of service of the persons appointed to public services and posts in connection with the affairs of the Union or any State, to the extent they govern the matter of adjudication of any dispute, irrespective of the fact whether it falls in schedule 2 or 3 or not, will prevail and the machinery devised in the rules will operate to the exclusion of the forums under the Industrial Disputes Act.

7.3 The expression "conditions of service of persons appointed" is of wide magnitude and would include fixation of the salary and other benefits payable to the government employees. The Governor, in absence of an Act of Legislature, is empowered to make pay rules under Article 309 for such employees fixing their pay-scales and revise them from time to time. The Gujarat Civil Services (R.O.P.) Rules, 1975 were made on 21-10-1975 by the Governor in exercise of powers under the proviso to Article 309. They preceded the recommendations of the Pay Commission and consideration by the Expert Committee appointed by the Government. Those statutory rules were not challenged by the petitioner and continued to govern the field. They were admittedly applicable to the employees of the government press. A copy of the said Gujarat Civil Services (Revision of Pay) Rules, 1975 notified on 21-10-1975 is on the record of the petition at Annexure "C" to the petition. Under Rule 4 of the said Rules, it was provided that, as from the date of commencement of these rules, the scale of pay of every post specified in column 2 of the Schedule-C shall be as specified against it in column 4 thereof. In Rule 11, provision was made for payment of arrears, and in Rule 12, it was stated that, where the pay is regulated under these rules, the provisions of the Bombay Civil Services Rules, 1959 (which also were framed under Article 309 of the Constitution), shall not apply to the extent they were inconsistent with these rules.

7.4 Under the head "Directorate of Government Printing and Stationary", at item 79 of the Schedule to the R.O.P. Rules, 1975 appears the post of Proof Reader,

for which pay-scale of Rs.350 - 560 was prescribed. At item 80, the post of Compositor is mentioned, against which the revised pay-scale was shown as Rs.290-480. At items 57 and 58 were mentioned the posts of Assistant Compose Foreman and Assistant Compose Supervisor, both in the pay-scale of Rs.350-560. As per the Recruitment Rules of the Assistant Compose Foreman (copy at Annexure "D" to the petition), appointment to that post was to be made by promotion of a person of proved merit and efficiency from amongst persons who were working in the Gujarat Subordinate Service, Class III, of the Government Printing & Stationary Department as Compositors for about ten years. Therefore, the post of Assistant Compose Foreman was a post of promotion from the cadre of Compositors and only those who had put in ten years service were made eligible for such promotion. The post of Compositors, as per the Recruitment Rules of 1976, was to be filled in by promotion of a person of proved merit and efficiency from amongst persons who were working as Assistant Compositors / Distributors for a period of three years. Furthermore, as per the Recruitment Rules for the post of Proof Readers, which are also on record, the appointment to the post of Proof Reader was to be made either by promotion of a person of proved merit and efficiency from amongst persons working in the Gujarat Subordinate Service, Class III, of Printing and Stationary Department, who possessed qualifications as specified in Rule 3 and had served as Copy Holder for a period of two years, or by direct selection. The rules of recruitment of various posts in the said Department indicate that the post of Assistant Compose Foreman was higher than the post of Compositor. In this background, the Pay Commission had recommended the higher pay-scale for the post of Assistant Compose Foreman of Rs.350 560, while the Compositors were given the pay-scale of Rs.290 480. The effect of the impugned award is of substituting the revised pay-scale shown against the post of Compositors who would now be given, if the award were to prevail, pay-scale of Rs.350 - 560 against their revised pay-scale of Rs.290-480 which was prescribed in the R.O.P. Rules, 1975.

8. If the rules framed under Article 309 of the Constitution are ignored and the Tribunal is authorized to change them in the above manner, then a startling unconstitutional situation will arise by enabling the Industrial Tribunal to virtually exercise the power under Article 309 by changing the pay-fixation done under the rules made by the Governor or the President and by subjecting the power to regulate service conditions conferred by Article 309 on the Legislature and / or the

President or the Governor, to Section 33(1) of the Industrial Disputes Act, which requires express permission in writing of the authority including Industrial Tribunal, before which any proceeding is pending, for altering service conditions under Article 309 to the prejudice of the workmen. Moreover, even for punishing such government employees for misconduct as per the Discipline & Conduct Rules that may have been framed under Article 309 of the Constitution, express permission of the Tribunal will be required. It is clear from the provisions of Part XIV of the Constitution and the provisions of the Industrial Disputes Act that the Tribunal has no jurisdiction to adjudicate an industrial dispute in a manner that would be in conflict with the operation of the rules framed under Article 309 of the Constitution and it will have no jurisdiction under Section 7A of the Industrial Disputes Act to affect the service conditions of the employees which are regulated by the rules made under Article 309 of the Constitution irrespective of the definition of "workman" or "employer" under the Industrial Disputes Act. The Industrial Tribunal can decide disputes relating to matters under schedule 2 or 3 only within the framework of the rules made under Article 309 of the Constitution and not de hors the rules even when the dispute referred to it may be between workman and his employer, as defined under the Act. The Tribunal, therefore, has acted beyond its jurisdiction in substituting the pay-scale of Rs.290-480 of the employees of the Government Press, Rajkot, which was prescribed under the Gujarat Civil Services (R.O.P.) Rules, 1975 by the higher pay-scale of Rs.360 - 560.

9. The Supreme Court in N.S.Giri v. The Corporation of City of Mangalore, reported in AIR 1999 SC 1958 has, in terms, held that, an award under the Industrial Disputes Act cannot be inconsistent with the law laid down by the Legislature or by the Supreme Court and if it does so, it is illegal and cannot be enforced. It was held that the award passed by arbitration fixing age of superannuation of 55 years of the employees of Mangalore City Municipality including those whose services were extended or of those who were re-employed after the aged of 50 years, at 58 years, being contrary to the provision of the statutory rules appointing the age of retirement at 55, cannot be upheld and given effect to by issuing a writ for its implementation. The decision of this Court to the extent that it conflicts with this decision of the Apex Court would no longer hold the field.

9.1 Even this Court, in a decision rendered on 7-4-1994 in Letters Patent Appeal No. 228 of 1993 and

other cognate matters, referring to the decision of the Supreme Court in Secretary, Finance Department v. West Bengal, reported in AIR 1992 SC 1203, held that it is well settled that the equation of posts and determination of pay-scales is the primary function of the executive and not the judiciary and therefore, ordinarily Courts will not enter upon the task of job evaluation, which is generally left to the expert bodies like the Pay Commissions, etc. It was held that the powers under Article 309 of the Constitution to frame Rules is a legislative power to be exercised by the President or a Governor of the State, as the case may be. The High Court cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution. When the specialised agencies have considered the question of equation of pay-scale and come to a finding that particular pay-scale scale was to be given to the post in question, the Court would be loathe to interfere with such conclusion which has been arrived at after a detailed exercise by an expert body like the Pay Commission or Expert Committee.

9.2 The Supreme Court in Union of India v. P.V.Hariharan, reported in (1997)3 SCC 568, observed in paragraph of its judgement as under :

"We have noticed that quite often the Tribunals are interfering with pay-scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay-scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realize that interfering with the prescribed pay-scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enhancing the pay-scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay-scales. We have come across orders passed by Single Members and that

too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too."

10. The Employer had clearly taken up the plea before the Tribunal that the Government Printing Press was not an industry, but the Tribunal has hardly dealt with that contention and seems to have proceeded on an assumption that Government Press was an industry. The government does not run its press for providing any utility service to outsiders as a commercial venture but runs it mainly for publication of gazettes and other official record which is essential for effective discharge of its other sovereign functions. In any event, since the field of pay fixation of the employees of Government Press was covered by the rules made under Article 309, the provisions of Section 7A did not give any power to the Tribunal which could be used in conflict with such rules. The contentions raised on behalf of the Union cannot, therefore, be accepted.

11. In the present case, the Tribunal has, without any valid justification, brushed aside the efforts of the Desai Pay Commission and the Expert Committee and usurped the powers of amending the ROP Rules by modifying the pay-scale which was given to the Compositors. Such an award cannot be sustained. The impugned award is, therefore, set aside. Rule is made absolute in Special Civil Application No.8280 of 1997 with no order as to costs. As a result, the petition filed by the Employees Union being Special Civil Application No.8729 of 1997 claiming 50% of the arrears, which were denied by the Tribunal, would fail and stands rejected. Rule is discharged in Special Civil Application No.8729 of 1997 with no order as to costs.

[R.K.ABICHANDANI, J.]

[KUNDAN SINGH, J.]

parmar*